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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/977,243	10/16/2001	Peter F. Reile	FSHR-042/00US 063518-2286	2235
22903 7590 09/28/2007 COOLEY GODWARD KRONISH LLP ATTN: PATENT GROUP Suite 1100 777 - 6th Street, NW WASHINGTON, DC 20001			EXAMINER NGUYEN, DAT	
			ART UNIT 3714	PAPER NUMBER
			MAIL DATE 09/28/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

09/977,243

Applicant(s)

REILE ET AL.

Examiner

Dat T. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19,21-41 and 43-62 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19,21-41 and 43-62 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

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## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action//as been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 07/17/2007 entered.

### ***Response to Amendment***

This office action is responsive to the amendments filed on 07/17/2007 in which applicant amends 1, 10, 19, 31, 43 and responds to claim rejections. Claims 1-19, 21-41 and 43-62 are pending.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-19, 21-41 and 43-62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hainey, II (US 2001/0038999) in view of Microsoft Office Shortcut Bar and Microsoft Paint (copyright 1981-1998 version 4) and further in view of SAMS Teach Yourself Paint Shop Pro 5, Michael T. Clark.

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The rejection as stated in the office action dated 01/23/2007 is retained and modified herein.

The discussion regarding Hailey II in view of Microsoft Office Shortcut Bar and Microsoft Paint from the previous office action dated 01/3/2007 is incorporated herein.

The prior art fails to explicitly teach a first interactive tool which enables the selection of various activities wherein a second interactive tool enabling the selection of a plurality of characteristics is associated with. The plurality of characteristics configured to vary based on the selection of one of said plurality of activities. However, Clark teaches the use of a paint program wherein such limitations are taught. More explicitly, Clark teaches the selection of an image type (page 44-46) wherein the types vary between color settings, 2, 16, greyscale, 256 or 16.7 million colors. The 2 bit color setting corresponds to a black and white palette wherein no colors or greys are available in the color wheel (page 51) since the image type is restrained to only 2 bits of information per pixel. While greyscale corresponds to a black and white image wherein greys are available in the color wheel and finally, 256 and 16.7 million colors corresponds to the different colors available for selection on the color wheel. The color wheel depicted on page 51 is an example of a 16.7 million color image. The selection of the image type corresponds directly to the colors available in the color wheel tool since the image would only be capable of the degree of complexity in which the user has selected. In relation to the claimed language, the selection of the image type corresponds to the first interactive tool enabling a plurality of activities, the activities being image types (the decision to color in black and white, grey, or color) and the

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second tool corresponds to the color wheel which has a plurality of characteristics (color settings) that vary based on the selection of the activity. Clark and the prior art are analogous because Clark teaches the use of a painting/drawing program much like that of Microsoft Paint and Hainey, II. Therefore it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to include the image type selection feature and color wheel of Clark with the drawing device of Hainey, II in view of Microsoft Office Shortcut Bar and Microsoft Paint in order to allow users the added freedom of selecting their image type and color palate with which they wish to use.

Further regarding claim 10, certain characteristics (colors) are not available when certain activities (image types) are selected, for instance when the 2 bit image type is selected, the color wheel will only have black or white while colors and greys are not selectable since the image format cannot retain such color information. However, if the 16.7 million color image type is selected, all the colors and greys are available for use.

Further regarding claim 19, the prior art fails to explicitly recite the step of determining the state of availability for a selected interactive tool with respect to the selected activity. However, Clark does teach the use of channels for 16.7 million colors or grey scale settings, however such channels are not available in a 2 bit black and white image since, inherently there is nothing to split. Therefore the use of the channels tools and associated options is not available for the 2 bit black and white images (pages 169-179). It would have been obvious to utilize the use of channels in the device of Hainey, II in view of Microsoft Office Shortcut Bar and Microsoft Paint in order to allow users to edit color and shading options of images.

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Further regarding claim 22, to clarify the point the examiner will explain how the prior art in the rejection stated above reads on the limitations of claim 22. The first drawing activity would be the selection of a 2 bit image wherein the first characteristic would be the selection of black or white on the color palate. The second activity would be the selection of a 16.7 million color image wherein the second activity is the selection of a color wherein the color is only applicable to be used in the second activity and not the first activity since the first activity is only a 2 bit image that does not support the use of colors.

Regarding claims 47, 52-57 and 62, wherein the tool bar is a printed tool bar (feature 27 figure 3 of Hainey, II). The tool bar is printed to the screen.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-19, 21-41 and 43-62 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

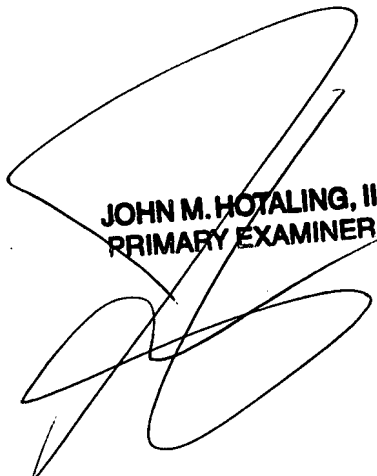
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dat T. Nguyen whose telephone number is (571) 272-2178. The examiner can normally be reached on M-F 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert E. Pezzuto can be reached on (571)272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Dat Nguyen

  
**JOHN M. HOTALING, II**  
**PRIMARY EXAMINER**